Supreme Court, U.S.
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No. 93-644

In The

Supreme Court of the United States

October Term, 1993

HONDA MOTOR CO., LTD.; HONDA R&D CO., LTD.; AND AMERICAN HONDA MOTOR CO., INC.,

Petitioners,

v.

KARL L. OBERG,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of Oregon

BRIEF OF *AMICI CURIAE* SNAP-ON TOOLS CORPORATION, TIM KASH, AND RAY PARK IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

	Page
INTEREST OF THE *AMICI CURIAE*	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	6

TABLE OF AUTHORITIES

Page

Eulrich v. Snap-on Tools Corp., 853 P.2d 1350 (Or. App. 1993), *petition for cert. filed*, 62 U.S.L.W. 3350 (U.S. Nov. 3, 1993) (No. 93-697) ..... *passim*

Oberg v. Honda Motor Co., 851 P.2d 1084 (Or. 1993) *passim*

TXO Production Corp. v. Alliance Resources Corp., 113 S. Ct. 2711 (1993) 2, 3, 4

Van Lom v. Schneiderman, 210 P.2d 461 (Or. 1949) ...4, 5

INTEREST OF THE *AMICI CURIAE*

Amici curiae Snap-on Tools Corporation, Tim Kash and Ray Park (the "Snap-on *amici*") support Petitioners, Honda Motor Co., *et al.* ("Honda"), and request the Court to hold that Oregon's refusal to conduct post-trial review to determine whether a jury's punitive damages award is excessive is a violation of due process of law.[1]

Shortly after Honda's petition for writ of certiorari was filed, these *amici* also filed a petition, *Snap-on Tools Corp., et al. v. Dan Eulrich, et al.*, No. 93-697, from another Oregon ruling in a non-products liability case, raising the same due process issue involving punitive damages as Honda. The Court has not yet taken action on the Snap-on *amici's* petition.

Snap-on is a manufacturer of high quality tools sold primarily through authorized dealers to professional mechanics. Park and Kash were managerial employees at Snap-on's Portland, Oregon branch. A former Snap-on dealer, Dan Eulrich, and his wife sued the Snap-on *amici* in Oregon state court for economic loss due to Eulrich's failed dealership under theories of fraud in the inducement of the dealership and tortious breach of the implied covenant of good faith. As to punitive damages, the jury was only instructed that it had the discretion to set the amount and that, in doing so, it "may" consider four factors: "the character of defendants' conduct"; "defendants' motive"; "the sum of money that would be required to discourage the defendants and others from

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[1] The written consent of the parties to allow this brief has been filed with the Clerk.

engaging in such conduct in the future"; and the "income and assets of the defendant."

According to Eulrich's own proof, he suffered approximately $10,000 in out-of-pocket loss. The jury awarded $100,000 in compensatory damages. On the fraud count, the jury awarded $4.75 million in punitive damages, jointly and severally, against Snap-on, Park, and Kash. Snap-on, a Fortune 500 Company, earns about $85 million annually. There was no evidence that Park and Kash were anything but individual wage earners. On the bad faith count, to which only Snap-on was a defendant, the jury awarded $3.7 million in punitive damages, which, under the instructions, was based on at least the same evidence as the fraud count. The court combined the punitive damages awards for a total of $8.45 million against Snap-on.

The Snap-on *amici* timely moved to set aside the awards as excessive and challenged the constitutionality of Oregon's rule against allowing a hearing on the issue. The trial court refused to hear whether the awards were excessive. While the *Snap-on* case was pending on appeal, the Oregon Supreme Court ruled in *Oberg v. Honda Motor Co.*, 851 P.2d 1084 (Or. 1993). The appellate court then affirmed the punitive damages judgment in the *Snap-on* case in one sentence citing *Honda*. *Eulrich v. Snap-on Tools Corp.*, 853 P.2d 1350, 1362 (Or. App. 1993), *petition for cert. filed*, 62 U.S.L.W. 3350 (U.S. Nov. 3, 1993) (No. 93-697).

Thereafter, *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993), was issued. The Snap-on *amici* petitioned for rehearing, citing *TXO* for the proposition that post-trial review on the issue of excessiveness

was a required element of due process. The appellate court denied the petition and the Oregon Supreme Court denied further review.

The Snap-on *amici* have a direct interest in the outcome of the case before the Court. They, like Honda, are recent victims of Oregon's prohibition against post-trial review.

SUMMARY OF ARGUMENT

In *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993), all nine justices recognized that due process requires courts to conduct post-trial review to determine whether a jury's punitive damages award is excessive. Oregon is the only state that prohibits any such review. After *TXO*, the Oregon Supreme Court twice refused to reconsider the prohibition against post-trial review – in *Honda* and the *Snap-on* case. As demonstrated by the *Snap-on* case, the intent of the Oregon courts is to continue Oregon's current system in *all* cases, not just products liability cases, unless the Court rules the Oregon system is unconstitutional. The Court should rule that Oregon's denial of post-trial review violates due process of law.

ARGUMENT

OREGON'S PROHIBITION OF POST-TRIAL REVIEW OF PUNITIVE DAMAGES SHOULD BE HELD UNCONSTITUTIONAL

Oregon gives juries the discretion to set any amount of punitive damages but bars its courts from determining whether the award is excessive. *See, e.g., Van Lom v. Schneiderman*, 210 P.2d 461 (Or. 1949). In *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993), the four-justice plurality and two justices in dissent found that the Due Process Clause sets substantive limits beyond which punitive damages cannot be awarded. *Id.* at 2718-20, 2724-26, 2731. Since excessiveness can only be determined after a jury verdict, the necessary protection for this substantive due process right is adequate post-trial review. All of the justices in *TXO* recognized that procedural due process requires judicial review of punitive damages awards for reasonableness, either expressly, *id.* at 2727, 2740-42, or by reviewing the post-trial review procedures in that case to determine their adequacy, *id.* at 2723-24.

After *TXO*, the Oregon Supreme Court twice declined to reconsider the prohibition against post-trial review – in *Honda* and the *Snap-on* case. As that court views it, due process is satisfied by having adequate pre-verdict procedures. In *Honda*, the Oregon court appears to partly justify its position because of particular jury instructions given in products liability cases. Oberg emphasized that in his response to Honda's petition. That supposed justification is empty rhetoric designed to obfuscate Oregon's true intent. As shown by the *Snap-on* case, in which minimal jury instructions were given, the

Oregon courts intend to continue to follow the bar against post-trial review in all cases. When, as in Oregon, a jury is given the discretion to set any amount of punitive damages it desires, a jury may act out of passion or prejudice and award an excessive amount. The fairness of pre-verdict procedures does not eliminate the risk that a jury will return an excessive verdict. The necessary check to the jury's discretion is post-trial judicial review for excessiveness, which is provided in every other state and was actually the Oregon common law system until abolished by an amendment to the state constitution. *See Van Lom*, 210 P.2d at 465.

The Snap-on *amici* had a compelling case to present to show the punitive damages award was excessive. For example, the amount was 845 times the out-of-pocket loss, two different awards were given for essentially the same conduct, no personal injury was involved, and the jury obviously ignored the instruction to consider a defendant's "income and assets" by ruling that two individual wage-earners, Park and Kash, were personally liable for $4.75 million in punitive damages. The Snap-on *amici* were denied any right to be heard post-trial on the issue. Every defendant in Oregon who now faces or will face a huge punitive damages award will continue to be denied post-trial review unless the Court declares that the Oregon system is unconstitutional.

CONCLUSION

The Court should reverse the punitive damages judgment against Honda and hold that Oregon's refusal to conduct post-trial review to determine whether a jury's award of punitive damages is excessive violates due process of law.

Respectfully submitted,

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